Petition

81-1143

No.

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In the

Supreme Court of the United States

October Term, 1981

CHARLES D. YETTKE,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

Dennis A. Berkson
One North LaSalle Street
Suite 2100
Chicago, Illinois 60602
312/726-7402
Attorney for Petitioner.

The Scheffer Press, Inc.—(312) 263-6850

ISSUES PRESENTED FOR REVIEW

I.

WHETHER THE ILLINOIS CONTROLLED SUBSTANCES ACT VIOLATES PETITIONER'S EQUAL PROTECTION AND DUE PROCESS RIGHTS IN THAT THE ACT IS VAGUE AND AMBIGUOUS AND THERE IS NO REASONABLE BASIS FOR THE CLASSIFICATION SCHEME THEREIN.

II.

WHETHER PETITIONER WAS DENIED HIS DUE PROCESS RIGHT TO A FAIR TRIAL WHEN THE TRIAL COURT ABANDONED ITS DUTY OF IMPARTIALITY BY INSTRUCTING THE STATE, SUA SPONTE, TO AMEND THE CHARGES TO CURE A FATAL VARIANCE IN THE PROOF AFTER THE STATE HAD RESTED ITS CASE.

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No.

CHARLES D. YETTKE,

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PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

OPINIONS BELOW

The Supreme Court of Illinois, on October 19, 1981, denied Petitioner's petition for leave to appeal. See Appendix A, *infra,* page 10a. The opinion of the Appellate Court of Illinois, Fourth District, is reported at 95 Ill. App.3d 365, 420 N.E.2d 194 (4th Dist., 1981), and is contained in Appendix A hereto, *infra,* page 1a.

JURISDICTION

The jurisdiction of this Honorable Court is invoked pursuant to Title 28, United States Code, Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Charles Yettke, was charged by information with unlawful possession with intent to deliver "more than thirty grams of a controlled substance, namely: cocaine"; unlawful possession of "more than thirty grams of a controlled substance, namely: cocaine"; unlawful possession with intent to deliver "more than 500 grams of cannabis"; and unlawful possession of "more than

500 grams of cannabis"; in violation of Illinois Revised Statutes, Chapter 56½, Sections 1401, 1402, 705 and 704 respectively. (C. 2-6). Following a jury trial, he was convicted of the aforementioned charges, and sentenced to concurrent terms of 10 years in the Department of Corrections for the possession with intent to deliver more than 30 grams of a substance containing cocaine, and five years in the Department of Corrections for possession with intent to deliver more than 500 grams of a substance containing cannabis. (C. 299-300)[1]

At the trial, the State offered testimony that various police officers, on June 12, 1979, executed a search warrant on petitioner's residence and therein located and seized the several items of contraband underlying the charges. The State offered the testimony of Michael Cravens, a forensic scientist employed by the Illinois Department of Law Enforcement as to the manner in which he received, weighed and identified the items taken from Petitioner's home. (R. 184, 187-195). As to each of the items, Cravens testified, over petitioner's repeated objections, that he determined each item to be either a "substance containing" cocaine or a "substance containing" cannabis. (R. 197-206, 208-212).

During his cross-examination, Cravens testified that the tests he performed on the substances were only qualitative, i.e., designed to determine whether a particular substance was present. Although Cravens was familiar with the procedures for performing quantitative tests, i.e., those to determine the percentage of each substance making up the whole, he did not perform quantita-

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[1] Petitioner was not sentenced for the offenses of possession of cocaine and possession of cannabis in that the trial court deemed these to be lesser included offenses. (R. 310-314).

tive tests in this case merely because he had not "set up" the proper techniques therefor. (R. 221-222).

At the close of the prosecution's case, defense counsel moved for a directed verdict of acquittal arguing in substance that the State's evidence showed each item to be a "substance containing" cocaine or cannabis, while the charges against petitioner did not cite "substance containing" contraband, but rather pure substances, *i.e.*: "more than 30 grams of cocaine" and "more than 500 grams of cannabis". Defense counsel argued that, given Cravens' testimony, the State had offered no evidence whatsoever to establish the actual amount of the specific substances, to-wit: cocaine and cannabis, as charged in the information. (R. 236-238). After hearing the defense arguments, but before hearing from the prosecution the trial court stated, "I'm going to permit, and I would suggest that the people so move to amend their information at this time." (R. 239). Thereafter, the court denied defendant's Motion for directed verdict (R. 240), and the State added the words "a substance containing" to each of the counts of the information. (C. 2-6).

At the close of the defense case, petitioner renewed his request for a directed verdict of acquittal which was again denied. (R. 252).

Subsequently, Petitioner was convicted and following the denial of his post-trial motions, was sentenced.

REASONS FOR GRANTING WRIT

I.

THE ILLINOIS CONTROLLED SUBSTANCES ACT VIOLATES PETITIONER'S EQUAL PROTECTION AND DUE PROCESS RIGHTS IN THAT THE ACT IS VAGUE AND AMBIGUOUS AND THERE IS NO REASONABLE BASIS FOR THE CLASSIFICATION SCHEME THEREIN.

Petitioner was convicted of possession with intent to deliver more than 30 grams of a substance containing cocaine and possession of more than 30 grams of a substance containing cocaine in violation of Illinois Revised Statutes, Chapter 56½, Sections 1401(a) and 1402(a) respectively.

Section 1401 provides in part:

> "Except as authorized by this Act, it is unlawful for any person knowingly to manufacture, or deliver or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this Section with respect to:
>
> (a) the following controlled substances and amounts, notwithstanding any of the provisions of subsections (b), (c), (d) or (e) to the contrary, is guilty of a Class X felony. The fine for violation of this subsection (a) shall not be more than $200,000 . . .
>
> (2) 30 grams or more of any *substance containing cocaine*; . . .
>
> (b) *any other amount of a controlled substance* classified in Schedules I or II which is a narcotic drug is guilty of a Class 2 felony. The fine for violation of this subsection (b) shall not be more than $25,000." (emphasis added).

Similarly, Section 1402 states in part:

> . . . (a) the following controlled substances and amounts notwithstanding any of the provisions of subsections (b) or (c) to the contrary, is guilty of a Class 1 felony for which an offender may not be sentenced to death. The fine for violation of this subsection (s) shall not be more than $10,000:
>
> (2) 30 grams or more of any *substance containing cocaine* . . .
>
> (b) any other *amount of a controlled substance* is guilty of a Class 3 felony. The fine for violation of this subsection (b) shall not be more than $15,000. (emphasis added).

Sub-paragraph (a)(2) of each of the above statutes defines an offense involving a "substance containing" cocaine. Subparagraph (b) of each statute omits the "substance containing" language and describes an offense involving only the actual amount of controlled substance. Consequently, a literal reading of these sections demonstrates that the penalty for possessing a diluted substance containing cocaine can substantially exceed the penalty for possessing a smaller amount of pure cocaine. For example, a person in possession of 30 grams of a substance containing only one gram of pure cocaine is subject to a far greater penalty than a person possessing 29 grams of pure cocaine. Thus, Petitioner submits that sections 1401 and 1402 are impermissibly ambiguous and vague.

This ambiguity, however, should be resolved by looking to the legislative intent underlying these provisions. *Busic* v. *United States,* 446 U.S. 398, 100 SCt. 1747 (1980). The only declaration of legislative intent directed towards these provisions is found in Illinois Revised Statutes, Chapter 56½, Section 1100, which expresses a goal of

penalizing "most heavily the illicit traffickers or profiteers of controlled substances, who propagate and perpetuate and abuse of such substances . . ." As Justice Craven correctly pointed out in his dissent below:

> "Assuming that cocaine is not sold in its pure state, then the person with the largest amount of cocaine will be able to distribute it to the largest group of people. It is the amount of the cocaine that determines the potential quantity for distribution and harm rather than the amount of the substance with which it happens to be mixed. If, for some reason, the cocaine is to be distributed in its pure state, then everyone would agree that the person with the most cocaine poses the greatest threat to society. After all, it must be more harmful to ingest a drug in its pure form rather than in a diluted or mixed form."

People v. *Yettke,* 95 Ill.App.3d 365, 372, 420 N.E.2d 194, 199 (4th Dist. 1981). Thus, the intent here is clearly to punish those persons dealing in the largest quantities of pure cocaine, which the statutes involved do not clearly establish. Because the statutory language is ambiguous, the ambiguity must be resolved in favor of the defendant. *Adamo Wrecking Co.* v. *United States,* 434 U.S. 275, 285, 98 S.Ct. 566, 572-573 (1978).

In the instant case, resolution of the ambiguity requires invalidating the provisions of Sections 1401(a)(2) and 1402(a)(2).

Petitioner submits further that the existing statutory language violates his right to equal protection. U.S. Const. Amends 5, 14. Previously, the Illinois Supreme Court had held, in *People* v. *Mayberry,* 63 Ill.2d 1, 345 N.E.2d 97 (1976) that a classification scheme based on "substance containing" language did not deprive the defen-

dant of equal protection where the defendant had "not demonstrated that a classification scheme based upon the amount of the pure drug contained in a given substance would be feasible." *People* v. *Mayberry,* 63 Ill.2d at 10, 345 N.E.2d at 101. Here, the State's forensic scientist testified that quantitative analysis was indeed feasible, but that he merely did not have the "techniques set up". In fact, quantitative tests are feasible and have been performed in past instances. See *People* v. *Taylor,* 54 Ill.App. 3d 454, 369 N.E.2d 573 (5th Dist. 1977)

Because a classification scheme based upon the amount of pure drug contained in the given substance is feasible there is no reasonable basis for the "substance containing" classification in Sections 1401 and 1402. This is consistent with the Court's reasoning in *Mayberry.*

Justice Craven expressed his position with irrefutable logic, as follows:

> "Clearly, if a defendant has the intent to deliver, or for that matter manufacture, possession of 29 grams of cocaine is potentially more harmful to society than the possession of 29 grams of sugar mixed with one gram of cocaine. But yet, it is the defendant that possesses the latter amount that will be punished more severely. Surely, this is an arbitrary classification scheme when, as the defendant here has demonstrated, it is possible for the State to determine the quantity of cocaine contained in a substance. Therefore, I conclude that there is no reasonable basis for a classification scheme based upon the amount of a *substance containing cocaine.*"

People v. *Yettke, supra,* 95 Ill.App.3d at 372, 420, N.E.2d at 199.

For these reasons, Petitioner submits that the foregoing provisions violate the equal protection clauses of the United States and Illinois Constitutions.

II.

PETITIONER WAS DENIED HIS DUE PROCESS RIGHT TO A FAIR TRIAL WHEN THE TRIAL COURT ABANDONED ITS DUTY OF IMPARTIALITY BY INSTRUCTING THE STATE, SUA SPONTE, TO AMEND THE CHARGES TO CURE A FATAL VARIANCE IN THE PROOF AFTER THE STATE HAD RESTED ITS CASE.

The information which charged Petitioner with possession and possession with intent to deliver specifically alleged that the possession was of "more than 30 grams of a controlled substance; namely, cocaine" and "more than 500 grams of cannabis." At the close of the State's case-in-chief, Petitioner made a timely motion for a directed verdict, pursuant to Illinois Revised Statutes, Chapter 38, Section 115-4(k), claiming that, taken in the light most favorable to the State, the proof showed only possession of more than 30 grams of a substance *containing* cocaine and 500 grams of a substance *containing* cannabis. The chemical testimony did not establish how much actual cocaine and cannabis were present in accordance with the charges.

Even though amendment of a charge can only be made on motion of the State or the defendant, Illinois Revised Statutes, Chapter 38, Section 111-5, the trial judge advised the State to amend the charges to insert the words "a substance containing" in each of the counts, after hearing Petitioner's argument on the motion for directed verdict, but before ruling thereon. Thereupon, the trial court denied the motion for directed verdict stating that there was no variance between the proof and the amended information. These actions constituted reversible error.

It is a fundamental principle that the trial judge has the burden of remaining impartial throughout the trial proceedings. See *United States* v. *Bray*, 546 F2d 581, 859 (10th Cir. 1975); *Lopez* v. *Vanderwater*, 620 F2d 1229, 1235-1236 (7th Cir. 1980), *cert. dismissed*, 449 U.S. 1028, 101 SCt. 601. This tenet has been stated as follows:

> "(G)reat care must be taken by a judge to 'always be calmly judicial, dispassionate and impartial. He should sedulously avoid all appearances of advocacy as to those questions which are ultimately to be submitted to the jury'. *Frantz* v. *United States*, 62 F2d 737, 739 (6th Cir. 1933). As good a summary as any of the applicable law was recently stated by Judge Pierce Lively in *United States* v. *Frazier*, 584 F2d 790, 794 (6th Cir. 1978): 'The basic requirement is one of impartiality in demeanor as well as in action.'"

United States v. *Hickman*, 592 F2d 931 (6th Cir. 1979).

In the instant case, it was incumbent on the prosecutor to present evidence to support the specific charges against Petitioner. But for the trial judge's intervention, there could *not* have been a finding of guilty as to the charges contained in the original, unamended information. To prevent this, the trial judge abandoned his position of impartiality by actively participating on the side of the prosecution to the detriment of Petitioner herein. This deprived Petitioner of his due process right to a fair trial. U.S. Const., Amends 5, 14. *In Re*: *Murchison*, 349 U.S. 133, 75 SCt. 623 (1955); *Jordan* v. *Massachusetts*, 225 U.S. 167, 32 SCt. 651 (1912).

Moreover, the Fifth and Fourteenth Amendments of the United States Constitution, U.S. Const. Amends. 5, 14, as well as Article I, Section 8 of the Illinois Constitution, Ill. Const., Art. I, Section 8 (1970), guarantee to

every criminal accused the right to demand the nature and cause of the accusation against him and to have a copy thereof.

> "[This right] is no empty technicality, but a substantial provision that may not be ignored . . . Section 111-3 of the Code of Criminal Procedure, (Ill. Rev. Stat., Ch. 38, Section 111-3) was enacted to insure compliance with this constitutional requirement."

People v. *Troutt*, 51 Ill.App.3d 656, 660, 366 N.E.2d 370, (5th Dist., 1977). Section 111-3 reads in pertinent part:

> "(a) A charge shall be in writing and allege commission of an offense by . . .
>
> (3) setting forth the nature and elements of the offense charged.
>
> (b) An information shall be signed by the State's Attorney and sworn to by him or another."

Ill. Rev. Stat. Ch. 38, Section 111-3.

Section 111-5, Ill. Rev. Stat., Ch. 38, Section 111-5 provides that an information which charges an offense in accordance with Section 111-3 may be amended at any time because of *formal* defects. Amendments are not allowed for alterations of the substance of the charge; only formal defects not concerning a substantive element of the offense can be amended. *People* v. *Gray*, 61 Ill. App. 3d 243, 377 N.E. 2d 1311 (4th Dist., 1978).

The amended informations in the instant case did not remedy mere formal defects, but dealt with a substantive element of the charged offenses. In prosecutions under the Controlled Substances Act for possession of a certain amount of a substance, the gram amount as well as the description of the substance, are essential elements going to the substance of the charge which must be contained in the charging instrument, must be specifically presented

to the jury and decided by them under proper instructions. *People* v. *Betts,* 78 Ill.App.3d 200, 397 N.E.2d 106 (1st Dist. 1979); *People* v. *Clutts,* 43 Ill.App.3d 366, 356 N.E.2d 1367 (5th Dist., 1976); *People* v. *Kadlec,* 21 Ill. App.3d 289, 313 N.E.2d 522 (3rd Dist., 1974). Accordingly, any amendment attempting to remedy a defect in the gram amount of a controlled substance charge is substantive and not within the purview of Section 111-5. The requirements of this statute must be met before any amendment will be allowed. *People* v. *Betts, supra.* The major requirement, that the defect be a formal one, was not established in this case. On the contrary, its existence is negatived by the fact that the charge dealt with an element of the offense itself.

Had the trial court not permitted the State to amend to charge possession of more than thirty grams of a substance containing cocaine, the evidence introduced by the State in its case-in-chief was insufficient to withstand Petitioner's motion for directed verdict. The record herein is devoid of testimony particularizing how much of the introduced "substance containing" actually was cocaine. When at the close of the State's evidence, the evidence is insufficient to support a verdict of guilty, the court on motion of the Defendant, *shall* direct the jury to return a verdict of not guilty. Ill. Rev. Stat., Ch. 38, Section 115-4(k). The evidence at the close of the State's case was insufficient to support a verdict of guilty on the essential element of the amount of substance possession.

The action of the trial court in advising the State to amend the information deprived Petitioner of his due process right to a fair trial. The amendment of the charges at the close of the State's case deprived Petitioner of his due process rights to notice of the nature of the charges against him. For these reasons, his conviction below was improper.

CONCLUSION

Wherefore, Petitioner, CHARLES D. YETTKE, prays that a writ of certiorari be granted herein.

Respectfully submitted,

DENNIS A. BERKSON
One North LaSalle Street
Suite 2100
Chicago, Illinois 60602
312/726-7402
Attorney for Petitioner.

APPENDIX A

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT

General No. 16103

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

v.

CHARLES YETTKE,
Defendant-Appellant.

Appeal from Circuit Court Champaign County
79-CF-639
Honorable HAROLD L. JENSEN, *Judge Presiding.*

(Filed Apr 23 1981)

Mr. JUSTICE GREEN delivered the opinion of the court:

After trial by jury in the circuit court of Champaign County, that court entered judgment on the verdict finding defendant, Charles Yettke, guilty of the offenses of unlawful possession with intent to deliver more than 30 grams of a substance containing cocaine and the unlawful possession with intent to deliver more than 500 grams of a substance containing cannabis. (Ill. Rev. Stat. 1979, ch. 56½, pars. 1401, 705, respectively.) On January 29, 1980, defendant was sentenced to 10 years imprisonment for the cocaine offense and 5 years for the cannabis offense, sentences to run concurrently.

On appeal defendant contends that the system of the Controlled Substances Act classifying the severity of cocaine offenses (Ill. Rev. Stat. 1979, ch. 56½, par. 1401) denies equal protection of laws. He also asserts that the trial court erred in (1) denying his motion to suppress

evidence, (2) allowing the State to amend the information after the close of the case, (3) submitting to the jury verdict forms which precluded the jury from determining a material element of the case, and (4) refusing to instruct the jury on included offenses. Finally, he maintains that regardless of the propriety of his conviction, he is entitled to a new sentencing hearing.

The principal issue in the case concerns the classification system for cocaine offenses. In relevant part, section 401 of the Illinois Controlled Substances Act (Ill. Rev. Stat. 1979, ch. 56½, par. 1401) states:

> "Except as authorized by this Act, it is unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this Section with respect to:
>
> (a) the following controlled substances and amounts, notwithstanding any of the provisions of subsection (b), (c), * * * is guilty of a Class X felony. The fine for violation of this subsection (a) shall not be more than $200,000;
>
> * * *
>
> (2) 30 grams or more of *any substance containing cocaine;*
>
> * * *
>
> (b) any other *amount of a controlled substance* classified in Schedules I or II which is a narcotic drug is guilty of a Class 2 felony. The fine for violation of this subsection (b) shall not be more than $25,000;
>
> (c) any other *amount of a controlled substance* classified in Schedule I or II which is not a narcotic drug is guilty of a Class 3 felony. The fine for violation of this subsection (c) shall not be more than $20,000." (Emphasis Added.)

A classification problem arises because section 401 (a)(2), providing for a Class X felony, speaks of "any

substance containing cocaine" while sections 401(b) and 401(c) providing for felonies with lesser penalties speak of the "amount of a controlled substance." Thus, a person manufacturing, delivering, or possessing with intent to deliver a very small amount of cocaine which becomes a part of another substance, the combined weight of which is only 30 grams, can be given a Class X sentence of not less than 6 years nor more than 30 years' imprisonment and a fine up to $200,000 while a person engaged in the same activities with a larger amount of cocaine not mixed with another substance and not having a weight of 30 grams would be punished much less severely. Imprisonment for a Class 2 felony provided for in section 401(b) would be for not less than 3 nor more than 7 years. (Ill. Rev. Stat. 1979, ch. 38, par. 1005-8-1(a)(5).) For a Class 3 felony provided for in section 401(c) the imprisonment would be for not less than 2 nor more than 5 years. (Ill. Rev. Stat. 1979, ch. 38, par. 1005-8-1(a)(6).) Defendant urges that this facet of the classification system enabling a greater punishment for one committing certain acts with a lesser weight of actual cocaine than the punishment given to one who may be doing so with a greater weight of cocaine, denies equal protection of the law. He maintains that as he was charged under section 401(a)(2), the classification deprives him in that way.

When cocaine is involved, the difference in punishment arising under section 401 has been widened by our recent decision in *People* v. *McCarty* (March 2, 1981, Gen. No. 16379), ... Ill. App. 3d ....., ... N.E.2d ..... We held that the classification of cocaine as a "narcotic drug" violated the equal protection clauses of both the Federal and State constitutions. Accordingly, section 102(aa)(4) of the Act (Ill. Rev. Stat. 1979, ch. 56½, par. 1102(aa)(4)), the section that defined cocaine as a narcotic, was severed from the Act because of its unconstitutionality. Therefore, for the purposes of the Act, cocaine is a schedule II, nonnarcotic drug; and the provisions of section 401(b) are not applicable because they apply only

to narcotic drugs. The act of delivery or manufacture, or possession with the intent to deliver or manufacture cocaine is punishable only under sections 401(a) or 401(c) of the Act.

Even though *McCarty* magnified the classification problem in regard to cocaine offenses arising under section 401 defendant's attack on the section is much the same as that rejected by the supreme court in *People* v. *Mayberry* (1976), 63 Ill. 2d 1, 345 N.E.2d 97. *Mayberry* was indicted for delivery of 200 or more grams of a substance containing a derivative of barbituric acid in violation of section 401(a)(5) of the Act. That section classified as a Class I felony, the knowing manufacture or delivery, or possession with intent to do either, of 200 grams or more of a substance containing the foregoing. Section 401(d) provided that committing the foregoing acts with "any other amount of a controlled substance classified in Schedule III" to be a Class 3 felony. The controlled substance involved was listed in Schedule III. The supreme court stated:

> "Our legislature may have believed that any given amount of drug can be distributed to a greater number of people and thus have a greater potential to be harmful if it is mixed with another substance. While the soundness of that belief may be questionable, the determination is one for the legislature to make, and we cannot find that the classification schemes at issue have no reasonable basis. *Also, the defendants have not demonstrated that a classification scheme based upon the amount of the pure drug contained in a given substance would be feasible.* We therefore conclude that the classification schemes are not unconstitutional merely because they are based on the amount of the 'substance containing' the cannabis or controlled substance rather than upon the pure cannabis or controlled substance." (Emphasis added.) 63 Ill. 2d 1, 9-10, 345 N.E.2d 97, 101.

Unlike the evidence in *Mayberry*, forensic scientists for the State testified here that the amount of cocaine in another substance can feasibly be determined by testing. Defendant maintains that, accordingly, *Mayberry* is not controlling in this case. The contention is based on the theories that: (1) lack of ability to quantify the amount of a controlled substance in the substance containing it was the only reason a classification scheme based upon the amount of pure drug involved was deemed in *Mayberry* not to be feasible; and (2) the lack of feasibility of such a classification system was the reason the *Mayberry* court upheld the present classification system of section 401. We disagree with both theories.

We interpret the thrust of the previously quoted statement from *Mayberry* to be that the classification meets the reasonable basis requirement of *People* v. *McCabe* (1971), 49 Ill. 2d 338, 275 N.E.2d 407, referred to earlier in the opinion, because the legislature could reasonably have concluded that a given amount of cocaine when mixed with other substances has a greater potential for harm than when left in its pure state. The basis of this belief would be that mixing with other substances facilitates more sales to more people thus causing more people to come under the harmful effects of the substance and, at the same time, enhancing the drug trade. We consider the italicized portion of the quote to be, at most, a secondary reason for the holding. Furthermore, we do not consider the lack of ability to measure the amount of pure drug in a substance to have been the only feasibility problem envisioned by the court. The court, having indicated that the total amount of a substance containing some controlled substance was of substantial significance, may have decided that basing punishment for a specified use of smaller quantities of contraband on both the amount of the total substance and the amount of the contraband would lack feasibility.

In any event, we conclude that the supreme court held the classification to have met the rational basis test and we do not deem the additional evidence here to have changed that. We consider *Mayberry* to be binding precedent and hold the classification of penalty under section 401 to be valid.

We note that the defendant has not argued that his cannabis conviction should be reversed because of the "substance containing" classification scheme of the Cannabis Control Act (Ill. Rev. Stat. 1979, ch. 56½, pars. 704, 705). Accordingly, this opinion does not address the classification scheme of the Cannabis Control Act.

We find little merit in most of defendant's other contentions. He asserts that his motion to suppress evidence seized from his house and his person should have been suppressed. These items were taken pursuant to a warrant authorizing the search of both. The verified complaint for the warrant was based upon information from an informant who claimed to have ingested cocaine on numerous occasions with defendant at his home. It was sufficient to show probable cause for search of the home. (*People* v. *George* (1971), 49 Ill. 2d 372, 274 N.E.2d 26.) Nothing taken from defendant's person was used to obtain his conviction. The trial court was merely remedying a formal defect by permitting the State to amend the information after the close of the State's case. The amendment charged the defendant with possession with intent to deliver a substance containing more than 30 grams of cocaine while the original charge was that he possessed with intent to deliver more than 30 grams of cocaine. Neither ruling of the court came close to being reversible error.

The jury instructions that were given included the gram amounts of the contraband, which are an essential element of the offenses with which the defendant was charged. However, the verdict forms which were given to and returned by the jury were general verdict forms.

They did not include the gram amounts. For example, one of the verdict forms returned by the jury stated:

> "We, the jury. find the defendant, Charles D. Yettke, guilty of unlawful possession with the intent to deliver cannabis."

The defendant contends that by utilizing the weight amount in the jury instructions to impliedly fill in the weight amount on the verdict forms, the trial was subject to the same constitutional infirmity present in *People* v. *Dell* (1972), 52 Ill. 2d 393, 288 N.E.2d 459; namely, the defendant was deprived of his right to be found guilty, by a finding on each material element of the offense charged.

However, in light of the recent supreme court opinion in *People* v. *Tannebaum* (1980), 82 Ill. 2d 177, 415 N.E. 2d 1027, *Dell* is not controlling. Here, unlike *Dell,* the jury instructions properly informed the jury of all the material elements of the offenses charged. Therefore, even though general verdicts were returned, the jury found the defendant guilty on each material element of the offense charged.

The trial court properly refused to instruct the jury on included offenses involving gram amounts of contraband lighter than for the offenses with which defendant was charged and for which defendant was convicted. No evidence indicated any lighter amount of contraband was involved.

Defendant's request for a new sentencing hearing is based upon his contention that the trial court failed to adequately specify its reasons for imposing the felony sentence as required by section 5-4-1(c) of the Unified Code of Corrections (Ill. Rev. Stat. 1979, ch. 38, par. 1005-4-1(c)) and also failed to grant defendant an opportunity to make a statement on his own behalf as required by section 5-4-1(a)(5) of that Code. (Ill. Rev. Stat. 1979, ch. 38, par. 1005-4-1(a)(5).) Contrary to defendant's contention, the record indicates that the trial court

set forth that it was imposing the sentence because of defendant's past record which was enumerated and the severity of the present offenses. Where, as here, a defendant is given full opportunity to introduce evidence in mitigation, counsel for that defendant is given full opportunity to be heard at sentencing, and the defendant makes no request to speak, the failure of the court to tender that opportunity to the defendant is not reversible error. (*People* v. *Darling* (1977), 46 Ill. App. 3d 698, 361 N.E.2d 121.) No new sentencing hearing is required.

We affirm for the reasons stated.

Affirmed.

WEBBER, *J.*, *concurs.* CRAVEN, *J.*, *dissents.*

JUSTICE CRAVEN, *dissenting*:

As the portion of the *Mayberry* opinion that is quoted by the majority indicates, the defendants in *Mayberry* did not demonstrate that "a classification scheme based upon the amount of the pure drug contained in a given substance would be feasible." (63 Ill. 2d 1, 10, 345 N.E. 2d 97, 101.) Clearly, this failure of proof was a factor in the court's conclusion that the classification scheme under attack had a reasonable basis.

Here, unlike the defendants in *Mayberry*, the defendant in this case has demonstrated that a classification scheme based upon the pure amount of the substance sought to be controlled (cocaine) is feasible. During cross-examination by the defense counsel, the forensic scientist testifying for the State explained that it was possible to quantify the amount of cocaine in a substance. He testified, however, that he did not perform a quantitative analysis on the substance containing cocaine in this case because he did not have the "techniques set up." The testimony of the forensic scientist for the State demonstrates that quantitative testing is feasible. Indeed, it is clear that quantitative tests are feasible and have

been performed in the past. See *People* v. *Taylor* (1977), 54 Ill. App. 3d 454, 369 N.E.2d 573.

Once it has been demonstrated that "a classification scheme based upon the amount of the pure drug contained in a given substance would be feasible" I cannot in good faith say that there is a reasonable basis for the classification scheme of section 401 of the Act with respect to that drug. This view is consistent with the language in *Mayberry*.

The classification scheme under attack here provides that if a defendant possesses with the intent to deliver a substance that weighs thirty or more grams, he is a Class X felon if the substance contains any amount of cocaine. Yet this same scheme provides that any person who possesses up to thirty grams of pure cocaine is a Class 3 felon. If the amount of the drug can be ascertained then such classification is patently unreasonable.

As the supreme court in *Mayberry* indicated, the only imaginable justification for this ostensibly unfair classification system is that any given amount of cocaine can be distributed to a greater number of people if it is mixed with another substance and thus arguably have a greater potential to be harmful. However, if the defendant is charged with possession with intent to deliver cocaine, as the defendant is here, the above rationale is not applicable. Assuming that cocaine is not sold in its pure state, then the person with the largest amount of cocaine will be able to distribute it to the largest group of people. It is the amount of the cocaine that determines the potential quantity for distribution and harm rather than the amount of the substance with which it happens to be mixed. If, for some reason, the cocaine is to be distributed in its pure state, then everyone would agree that the person with the most cocaine poses the greatest threat to society. After all, it must be more harmful to ingest a drug in its pure form rather than in a diluted or mixed form.

Clearly, if a defendant has the intent to deliver, or for that matter manufacture, possession of 29 grams of cocaine is potentially more harmful to society than the possession of 29 grams of sugar mixed with one gram of cocaine. But yet, it is the defendant that possesses the latter amount that will be punished more severely. Surely this is an arbitrary classification scheme when, as the defendant here has demonstrated, it is possible for the State to determine the quantity of cocaine contained in a substance. Therefore, I conclude that there is no reasonable basis for a classification scheme based upon the amount of a *substance containing cocaine*. Accordingly, I would find that section 401(a)(2) of the Act violates the equal protection clause of the United States and Illinois constitutions. For this reason, I must dissent.

ILLINOIS SUPREME COURT
Clell L. Woods, Clerk
Supreme Court Building
Springfield, Ill. 62706

(217) 782-2035

October 19, 1981

Barnett, Ettinger, Glass,
Berkson & Braverman, Ltd.
Attorneys at Law
One North LaSalle St., S#2100
Chicago, IL 60602

No. 55084—People State of Illinois, respondent, vs. Charles Yettke, petitioner. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Clell L. Woods
Clerk of the Supreme Court

Opposition

Office - Supreme Court, U.S.
FILED
FEB 16 1982
ALEXANDER L. STEVAS,

No. 81-1143

In the Supreme Court of the United States

OCTOBER TERM, 1981

CHARLES D. YETTKE,
PETITIONER,

VS.

PEOPLE OF THE STATE OF ILLINOIS,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FOURTH DISTRICT

BRIEF FOR RESPONDENTS IN OPPOSITION

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

MELBOURNE A. NOEL, JR.,

MICHAEL B. WEINSTEIN,

DAVID BINDI,
Assistant Attorneys General
188 West Randolph Street
Suite 2200
Chicago, Illinois 60601
(312) 793-2570

Attorneys for Respondent.

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QUESTIONS PRESENTED FOR REVIEW

Whether the portion of the Illinois Controlled Substances Act which provides for penalties graduated in severity according to the weight of a "substance containing cocaine" is sufficiently clear and unambiguous to give notice to persons of ordinary intelligence as to what acts are proscribed, and whether said Act constitutes a rationally based statutory classification.

Whether the trial court acted properly in permitting the state to amend the information to correct a formal defect and conform to the proof.

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No. 81-1143

In the Supreme Court of the United States

OCTOBER TERM, 1981

CHARLES D. YETTKE,
PETITIONER,

VS.

PEOPLE OF THE STATE OF ILLINOIS,
RESPONDENTS.

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The Appellate Court of Illinois, Fourth District, affirmed petitioner's convictions for possession with intent to deliver 30 grams or more of a substance containing cocaine and 500 grams or more of a substance containing cannabis. The opinion is reported at 95 Ill. App. 3d 365, 420 N.E.2d 194 (4th Dist. 1981). On October 19, 1981, the Supreme Court of Illinois denied petitioner's petition for leave to appeal. (*See* Pet. Br. App. A, p. 10a)

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(3). He was charged by information with posses-

sion and possession with intent to deliver 30 grams or more of a substance containing cocaine, and possession and possession with intent to deliver 500 grams or more of a substance containing cannabis, in violation of the Illinois Controlled Substances Act (*Ill. Rev. Stat.* (1979) ch. 56 1/2 pars. 1402, 1401, 705, and 704). He was convicted on all charges. However, the trial court deemed the two possession offenses to be lesser included offenses of possession with intent to deliver, and so entered judgment and imposed sentence only on the greater offenses.

In his petition, petitioner challenges the constitutionality of his convictions under sections 401 and 402 for possession with intent to deliver and possession of 30 grams or more of a substance containing cocaine. Respondents submit, however, that since no judgment was entered on the possession offense, and since § 1257 limits this Court's jurisdiction to review of final judgments of the state courts, jurisdiction exists here only for review of section 401. Furthermore, it appears that petitioner does not challenge his conviction and sentence under section 704 for possession with intent to deliver 500 grams or more of a substance containing cannabis. Therefore, should this Court grant the petition, it would be limited to review of section 401, and petitioner's conviction under section 704 would be uneffected in any event. However, as treated more fully below, respondents submit that no good reason exists for this Court to exercise its sound judicial discretion and grant the petition for a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land

or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ill. Rev. Stat. (1979) ch. 56 1/2, pars. 1401 (a)(2), (b)

1401. Manufacture or delivery unauthorized by Act — Penalties.

§ 401. Except as authorized by this Act, it is unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this Section with respect to:

(a) the following controlled substances and amounts, notwithstanding any of the provisions of subsections (b), (c), (d) or (e) to the contrary, is guilty of a Class X felony. The fine for violation of this subsection (a) shall not be more than $200,000 . . .

(2) 30 grams or more of any substance containing cocaine;

(b) any other amount of a controlled substance classified in Schedules I or II which is a narcotic drug is guilty

of a Class 2 felony. The fine for violation of this subsection (b) shall not be more than $25,000;

REASONS FOR DENYING THE WRIT

I.

THE PORTION OF THE ILLINOIS CONTROLLED SUBSTANCES ACT WHICH PROVIDES FOR PENALTIES GRADUATED IN SEVERITY ACCORDING TO THE WEIGHT OF A "SUBSTANCE CONTAINING COCAINE" IS NOT VAGUE OR AMBIGUOUS, NOR DOES IT CREATE AN UNREASONABLE STATUTORY CLASSIFICATION.

Petitioner seeks review in this Court of the judgement of the Illinois Appellate Court for the Fourth District affirming his conviction for unlawful possession with intent to deliver 30 grams or more of a substance containing cocaine in violation of section 401 of the Illinois Controlled Substances Act, *Ill. Rev. Stat.* (1979) ch. 56½, par. 1401. Section 401 provides, in pertinent part:

> §401. Except as authorized by this Act, it is unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this Section with respect to:
>
> (a) the following controlled substances and amounts, notwithstanding any of the provisions of subsections (b), (c), (d) or (e) to the contrary, is guilty of a Class X felony. The fine for violation of this subsection (a) shall not be more than $200,000 . . .
>
> (2) 30 grams or more of any substance containing cocaine;
>
> (b) any other amount of a controlled substance classified in Schedules I or II which is a narcotic drug is

> guilty of a Class 2 felony. The fine for violation of this subsection (b) shall not be more than $25,000;

Petitioner challenges the constitutionality of section 401 on two grounds. First, he argues that because sub-paragraph (a)(2) defines an offense in terms of a "substance containing cocaine" while sub-paragraph (b) omits the "substance containing" language, the statute in unconstitutionally vague and ambiguous, in violation of his right to due process under the Fifth and Fourteenth Amendments. Secondly, he argues that the "substance containing" language of sub-paragraph (a)(2) permits a defendant to be punished more severely even though he may be in possession of a smaller amount of pure cocaine than someone subject only to the penalty for violation of sub-paragraph (b), thus violating his right under the Fourteenth Amendment to equal protection of the laws.[1]

Petitioner's vagueness argument is clearly without merit. A statute defining a crime is unconstitutionally vague only if it "... fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." *United States v. Harriss*, 347 U.S. 612, 617 (1954). Similarly, a sentencing provision is unconstitutionally vague only if it "... [does] not state with sufficient clarity the consequences of violating a given criminal statute." *United States v. Batchelder*, 442 U.S. 114, 123 (1979). Petitioner contends that the presence of the "substance containing" language in sub-paragraph (a)(2) of section 401 coupled with its absence in sub-paragraph (b) creates an ambiguity as to the severity of the consequences of committing the offense with respect to a particular quantity

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[1] Violation of sub-paragraph (a)(2), aside from carrying a fine of up to $200,000 is also a Class X felony, which is punishable by a term of imprisonment of from 6 to 30 years. *Ill. Rev. Stat.* (1979) ch. 38, par. 1005-8-1(a)(3). Violation of sub-paragraph (b) carries a fine of up to $25,000, and is a Class 2 felony, punishable by a term of imprisonment of from 3 to 7 years. *Ill. Rev. Stat.* (1979) ch. 38 par. 1005-8-1(a)(5).

of cocaine. It is ironic that he chooses to illustrate this "ambiguity" with an example that reflects a correct application of section 401: "For example, a person in possession of 30 grams of a substance containing only one gram of pure cocaine is subject to a far greater penalty than a person possessing 29 grams of pure cocaine." (Pet. Br. p.6) The Illinois Supreme Court found in *People v. Mayberry*, 63 Ill.2d 1, 8-9, 345 N.E.2d 97, *cert. den.* 429 U.S. 828 (1976), that the statute does indeed operate in this fashion. Moreover, petitioner admits that the result of his example follows from "a literal reading of these sections . . ." (Pet. Br. p. 6) It is therefore apparent that sub-paragraphs (a)(2) and (b) state with sufficient clarity the consequences of violating section 401. *Batchelder, supra.* Petitioner's suggestions for resolving ambiguity need not be considered since none exist.

Petitioner's next contention is that the operation of sub-paragraphs (a)(2) and (b) as detailed above denies him the right under the Fourteenth Amendment to equal protection of the laws. This contention was squarely faced by the Illinois Supreme Court in *People v. Mayberry, supra*; by the Florida Supreme Court in *State v. Yu*, 400 So.2d 762 (Fla. 1981); and by the United States Court of Appeals for the Second Circuit in *United States ex rel. Daneff v. Henderson*, 501 F.2d 1180 (2nd Cir. 1974). In each case it was held that a rational basis existed for a statutory scheme which penalizes drug offenders with sentences graduated in severity according to the weight of a substance containing a controlled substance.

Section 100 of the Illinois Controlled Substances Act (*Ill. Rev. Stat.* (1979) ch. 56½, par. 1100) contains a statement of legislative intent which provides, *inter alia*, that "[i]t is the intent of the General Assembly . . . (3) [to] penalize most heavily the illicit traffickers or profiteers of controlled substances, who propogate and perpetuate the abuse of such substances . . ." In *Daneff*, the Second Circuit Court of Ap-

peals found that the petitioner's argument that the New York statute was irrational proved both too much and too little:

> Too much, in the sense that, by accepting appellant's own premise that narcotics such as heroin and cocaine are generally marketed in mixtures or compounds, it does not seem unreasonable or irrational for a legislature to deal realistically with the marketing of the mixture or compound rather than the handling of the pure narcotic. Too little, in the sense that while it may not be wise to let the possessor of the pure or a purer product escape with a lighter penalty than that going to the possessor of the drug in its ordinary marketable form, it is not necessary for a legislature to attempt to eradicate all evil, but only part of it; as the Court said in *Pennsylvania v. Ashe*, 302 U.S. 51, 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937), "The comparative gravity of criminal offenses and whether their consequences are more or less injurious are matters for [the state's] determination."

501 F.2d at 1184. The Illinois Supreme Court in *Mayberry* relied heavily on the reasoning in *Daneff*:

> We find the reasoning of the court in *Daneff* persuasive. Our legislature may have believed that any given amount of drug can be distributed to a greater number of people and thus have a greater potential to be harmful if it is mixed with another substance. While the soundness of that belief may be questionable, the determination is one for the legislature to make, and we cannot find that the classification schemes at issue have no reasonable basis.

63 Ill.2d at 9. The Florida Supreme Court, in turn, adopted as its own the rationale of *Mayberry*. 400 So.2d at 764.

From this, it is clear that the rationale of *Mayberry* is not, as petitioner suggests, dependent on the feasibility of analyzing a substance containing cocaine to determine the quantity of pure cocaine present. The reasonableness of the statutory

scheme, in light of the expressed legislative intent, is in no way undermined by the feasibility of quantitative analysis. Indeed, the Illinois Appellate Court here found that the Supreme Court's reference to the feasibility of quantitative analysis was at most a secondary reason for the holding in *Mayberry. People v. Yettke*, 95 Ill. App. 3d 365, 369, 420 N.E.2d 194 (4th Dist. 1981).

Because petitioner's constitutional challenge to the Illinois Controlled Substances Act lacks merit, and because every court that has decided the issue has upheld the constitutionality of provisions such as section 401, respondents submit that this Court should deny the petition for a writ of certiorari.

II.

THE TRIAL COURT ACTED PROPERLY IN PERMITTING THE STATE TO AMEND THE INFORMATION TO CORRECT A FORMAL DEFECT AND CONFORM TO THE PROOF.

Petitioner was initially charged by information with possession with intent to deliver "more than 30 grams of a controlled substance; namely cocaine." (C. 2-6) The testimony of the State's forensic scientist disclosed that the substance in petitioner's possession weighed over 30 grams and contained cocaine, but it did not establish that over 30 grams of pure cocaine was present. (R. 197-212, 221-222) At the close of the State's case, petitioner moved for a directed verdict. (R. 236-238) Prior to ruling on the motion, the trial judge stated "I'm going to permit, and I would suggest that the people so move to amend their information at this time." (R. 239) The State then amended the information to add "a substance containing" to each count, and the motion for a directed verdict was denied. (C. 2-6, R. 239) Petitioner seeks to have this Court review two separate due process claims arising from this

occurrence: first, he alleges that the trial judge's conduct amounted to an abandonment of his duty to remain dispassionate and impartial; secondly, he alleges that the amendment to the information constituted a substantive alteration of the charges and not merely a correction of a formal defect.

The Illinois Appellate Court considered this issue and concluded that it did not "[come] close to being reversible error." 95 Ill. App. 3d 365, 370, 420 N.E.2d 194 (4th Dist. 1981). *Ill. Rev. Stat.* (1979) ch. 38, pars. 111-3 and 111-5 provide that the information shall specifically set forth the nature and elements of the offenses charged, and that formal defects can be corrected by amendment.[2] These provisions are intended to apprise the defendant with reasonable certainty of the charges against him so as to enable him to prepare a defense and to protect him from possible exposure to double jeopardy. *People v. Shelton*, 42 Ill.2d 490, 248 N.E. 2d 65 (1969).

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[2] The statutes read as follows:

111-3. Form Of Charge

(a) A charge shall be in writing and allege the commission of an offense by:

(1) Stating the name of the offense;

(2) Citing the statutory provision alleged to have been violated;

(3) Setting forth the nature and elements of the offense charged;

(4) Stating the date and county of the offense as definitely as can be done; and

(5) Stating the name of the accused, if known, and if not known, designate the accused by any name or description by which he can be identified with reasonable certainty.

111-5. Formal Defects In A Charge

An indictment, information or complaint which charges the commission of an offense in accordance with Section 111-3 of this Code shall not be dismissed and may be amended on motion by the State's Attorney or defendant at any time because of formal defects, including:

(a) Any miswriting, misspelling or grammatical error;

(b) Any misjoinder of the parties defendant;

continued on next page

Where the State's proof varies from the elements charged in the information, but the defect is only formal, and the original information sufficiently informed the defendant of the crime charged, amendment is allowed. *People v. Coleman*, 49 Ill.2d 565, 276 N.E.2d 721, (1971).[3] In *People v. McGee*, 72 Ill. App. 3d 576, 391 N.E. 2d 5 (1st Dist. 1979), it was held that an information charging the defendant with delivery of "a quantity of more than 30 grams of a certain controlled substance, to wit: heroin" was not fatally defective despite the absence of the "substance containing" language and the fact that the substance delivered contained only 12.3 grams of heroin. The Court found that the information described the offense with sufficient clarity to protect the defendant from double jeopardy. Furthermore, in *McGee* it was found that the statutory language missing from the information did not cause prejudice to the defendant's preparation of a defense since his defense was that he did not deliver the heroin. This problem doesn't even arise here since the information was amended before petitioner's presentation of his case. Therefore, as in *McGee*, the petitioner here cannot seriously contend that the defect in the original information

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continued from previous page

(c) Any misjoinder of the offense charged;

(d) The presence of any unnecessary allegation;

(e) The failure to negative any exception, any excuse or provision contained in the statute defining the offense; or

(f) The use of alternative or disjunctive allegations as to the acts, means, intents or results charged.

Although six formal defects are specifically mentioned in section 111-5, this is not intended to be an exhaustive list. *People v. Jones*, 53 Ill. 2d 460, 292 N.E.2d 361 (1973).

[3] Federal law on this subject is substantially the same as Illinois law. See *Berger v. United States*, 295 U.S. 78 (1935); *United States v. Bottom*, 638 F.2d 781 (5th Cir. 1981); *United States v. Brozyna*, 571 F.2d 742 (2nd Cir. 1978); *United States v. Hollinger*, 553 F.2d 535 (7th Cir. 1977).

misled him as to the offense being charged, or, had it not been amended, would have subjected him to double jeopardy.

Finally, petitioner's allegation that the trial judge abandoned his duty of impartiality, closely tied as it is to his claim that there was a substantive variance between the information and the proof, must fall with it. Since the variance was quite clearly a formal one, it can hardly be maintained that the judge's suggestion that the State move to amend rose to the level of advocacy on behalf of the State.

Because the Illinois Appellate Court properly disposed of this issue, and because petitioner has failed to show any need for this Court to review it, the petition should be denied.

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

MELBOURNE A. NOEL, JR.,

MICHAEL B. WEINSTEIN,

DAVID BINDI,
Assistant Attorneys General
188 West Randolph Street,
Suite 2200
Chicago, Illinois 60601
(312) 793-2570

Attorneys For Respondent.